

Current Issues in Financial Assurance for Uranium Recovery Licensees

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Introduction

- 10 CFR Part 40, Appendix A Criteria Requires Uranium Recovery Licensees (Conventional & *In Situ Leach* (ISL) to:
 - Post Appropriate Financial Assurance Using NRC-Approved Financial Instruments (Criterion 10)
 - Post Financial Assurance Adequate for an *Independent Contractor* to Complete Remediation (Criterion 9)



Introduction

- 10 CFR Part 40, Appendix A Financial Assurance Requirements Generally Interpreted by:
 - NRC Guidance Documents:
 - NUREGs (Sample Templates)
 - Branch Technical Positions (BTPs)
 - Subpart L Litigation & Previous Licensee Submissions



New Issues for Part 40 Licensees

- **10 CFR Part 40, Appendix A, Criterion 9:**
 - Conventional and ISL Uranium Recovery Licensees Must Post Financial Assurance Using NRC-Approved Financial Instruments Such As:
 - Surety Bond
 - Letter of Credit
 - Certificate of Deposit
 - Combination of the Above



New Issues for Part 40 Licensees

- **NRC Guidance Documents Also Permit the Use of:**
 - Parent Company Guarantees (PCGs)
 - NUREG-1727: *NMSS Decommissioning Standard Review Plan*



New Issues for Part 40 Licensees

- **Parent Company Guarantees Are Financial Instruments That Permit:**
 - Parent Companies to “Guarantee” Their Subsidiaries’ Financial Assurance Responsibilities
 - Parent Companies Are Required to:
 - Directly Fund Remediation Activities; or
 - Submit Such Funds Into an NRC-Approved Standby Trust Fund



Recent NRC Guidance on PCGs

- Until 2003-2004, NRC Guidance Documents Did Not Permit Part 40 Uranium Recovery Licensees to Use PCGs:
 - Branch Technical Position
 - Depressed Uranium Market Leads to:
 - No Parent Company Guarantees



Changed Circumstances

- **New Factors Leading to Change of Circumstances:**
 - September 11, 2001 Creates Severe Impacts on Commercial Surety Market
 - Commercial Surety Providers Avoid Environmental Remediation Commitments
 - Uranium Spot-Market Prices Reach \$17/lb.



“Forced” New Alternatives

- **Part 40 Licensees Forced to Pursue New Alternatives to Surety Bonds:**
 - Surety Providers Require Up to 100% Collateral for New Surety Bonds and Letters of Credit
 - Surety Providers Refuse to Issue New or Renew Existing Surety Bonds



Parent Guarantee Requirements

- **NRC-Approved Parent Guarantee Requirements Include:**
 - Satisfy One of Two Financial Tests
 - Asset Ratios
 - Bond Rating (Moody's or Standard & Poor's)
 - Submit Parent Guarantee Agreement
 - Financial Certifications from Chief Financial Officer & Licensee President



Licensee Developments

- **Western Nuclear, Inc. (WNI), Split Rock, Wyoming Facility**
 - Recently Obtained Parent (Phelps Dodge Corporation) (PDC) Guarantee for Financial Assurance
 - PDC Satisfies Financial Test II for Bond Rating



“Independent Contractor” Requirements

- **10 CFR Part 40, Appendix A, Criterion 9 Requires That:**
 - “the licensee’s cost estimates must take into account total costs that would be incurred if an *independent contractor* were hired to perform the decommissioning and reclamation work.”



Issues for Independent Contractor Remediation

- **Issue:** What Does Remediation By An Independent Contractor Under 10 CFR Part 40, Appendix A, Criterion 9 Actually Mean?



Potential Interpretations

- Potential Answers: Licensees Must Post Financial Assurance Sufficient to:
 - (1) Repurchase *All* Site Equipment and Supply *All* New, Untrained Site Personnel
 - (2) Utilize *All or Some* Existing Site Equipment and Some Existing Trained Site Personnel



Description of Interpretations

- **Answer #1:** Repurchase *All or Some* Site Equipment and Supply *All or Some* New, Untrained Site Personnel
 - Under This Interpretation, Licensees Must Post Financial Assurance Sufficient to:
 - Complete Decommissioning Activities
 - Decontaminate and/or Dispose & Re-Purchase All *Stationary* Equipment Such As:
 - Ion-Exchange Columns
 - Groundwater Restoration Equipment (Wells, Pipes)
 - Decontaminate and/or Re-Purchase All *Portable* Equipment
 - Front-end Loaders
 - Replace All Site Personnel With New, Untrained Personnel
 - One Worker Per Task (No Multiple Hats)



Description of Interpretations

- **Answer #2:** Utilize *All or Some* Existing Site Equipment and Existing Trained Site Personnel
 - Under This Interpretation, Licensees Must Post Financial Assurance Sufficient to:
 - Complete Decommissioning Activities
 - Fund Independent Contractors' Use of:
 - Existing Site *Stationary & Portable* Equipment
 - Portions or All of Existing Site Personnel



NRC Guidance & Interpretations

- **NRC Guidance Is Unclear On The Proper Interpretation:**
 - NUREG-1569 *Standard Review Plan for In Situ Leach Uranium Recovery Facilities* Presents Two Divergent Viewpoints:
 - p. 6-26 *Evaluation Findings*: “The applicant has based the assumptions for financial surety analysis on site conditions, including experiences with *generally accepted industry practices...*”
 - Appendix C, p. C-5: “Equipment owned by the licensee and the availability of licensee staff should not be considered in the estimate...”



NRC Guidance and Interpretations

- Additional NRC Statements:

- NUREG-1569

- Appendix C, p. C-3: “The water treatment equipment used during the uranium recovery phase...is *generally suitable* for the restoration phase.”
- Appendix C, p. C-3: “Replacement costs of some water treatment equipment may need to be included in the surety *if the equipment used for restoration is near the end of its serviceable life.*”



HRI Litigation Interpretations

- Hydro Resources, Inc. (HRI) Crownpoint Uranium Project
- Atomic Safety and Licensing Board Panel (ASLBP) Interpretation on Section 8 Litigation:
 - Financial Assurance by An Independent Contractor Must Include:
 - Replacement Costs for *All Major* Site Equipment
 - Costs For Site Employees Not Wearing “Multiple Hats” (No Multi-Tasking)



ASLBP Interpretation

- **Results If ASLBP Interpretation Is Upheld:**
 - ISL Licensees Will Be Required to Post Significantly Increased Financial Assurance to Cover:
 - Removal and Re-Deployment of Well-field Equipment
 - Removal, Decontamination, Disposal, and Re-Installation of Process Equipment
 - Replacement of *Movable* Equipment
 - Replacement of Site Personnel and Retraining of New Site Personnel



HRI's Position on Appeal

- **HRI's Proposed Financial Assurance Satisfies NRC Requirements:**
 - Financial Assurance Includes Additional 20% Figure for Unforeseen Contingencies
 - Uses Same or Similar Model to Those Proposed by Other ISL Licensees
 - Multi-Tasking Employees
 - Assumes Use of *Stationary* Equipment
 - NRC Mandatory Annual Surety Updates Addresses Replacement of Malfunctioning or Broken Site Equipment



Final Results

- The Commission Has Extended Review of HRI's Appeal Until May 19, 2004
- The Commission Potentially May:
 - Reject HRI's Appeal Outright
 - Accept HRI's Appeal for Review
 - Request Further Briefing
 - Decide the Issues on the Merits

